

[REDACTED]

[REDACTED]

[REDACTED]

JUL 6 1995

Dear Sir/Madam:

This is in regard to your application for recognition of exemption under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates that you were incorporated under the non-profit corporation laws of [REDACTED] on [REDACTED]. Your purposes as stated in your articles of incorporation are as follows:

1. To support litigation which in view of the Board of Directors, is likely to establish precedents beneficial to the American society;
2. To support litigation conducted by litigants who would otherwise be unable to afford effective assistance of counsel;
3. To conduct research on legal issues and use and publish the results of such research in ways beneficial to American society;
4. To assist other charitable and educational organizations in the conduct of similar activities.
5. To engage in other charitable and/or educational activity as determined by the Board of Directors.

You state that you were formed for the general purpose of supporting and assisting in litigation involving the defense of human and civil rights secured by law. You plan to support principally those cases that involve significant First Amendment issues, general constitutional issues and civil rights issues. You also state that you may, however, assist in other types of cases as well.

You state that decisions with respect to cases will be made based upon "the criteria applicable to old-line litigating

organizations and public interest law firms." Your Board of Directors will be responsible for selecting cases for which you will provide support. You state that no decisions to support any particular cases have yet been made. In addition, you state that it has not been decided how cases will be found. You indicate that you have not completed the expansion of your Board of Directors since your [REDACTED] formation date. You also state that no fund raising letters or literature has yet been created.

Your sole officer and director is [REDACTED], who serves as your president. [REDACTED] is an officer and director of two for-profit corporations, engaged in various fund-raising activities.

You state that you intend to begin your fund-raising program by testing mailings to various lists which seem to be good prospects for an organization of your type. You state that until mailing lists have been tested and developed, it cannot be decided whether it would be feasible or advisable for the organization to rent or exchange its list. You indicate that you will be renting mailing lists from other organizations but no negotiations for mailing lists rental have been initiated. You further state that if it is decided to rent the list, the list will be marketed through a list broker who will be authorized to rent the list to other organizations at rates established by the market place. You indicate that it may become advisable to exchange the list with other organizations which possess list which may be of use to your organization. You state these decisions will be made by your Board of Directors in consultation with the officers and staff, and the outcome of any such deliberations cannot at this time be determined.

Section 501(c)(3) of the Internal Revenue Code provides for the exemption of organizations that are organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any shareholder or individuals.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations states that in order for an organization to be exempt as an organization described in section 501(c)(3), it must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational or operational test, it is not exempt.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in

activities which accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of section 1.501(c)(3)-1(d)(1) unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interest.

Rev. Rul. 80-278, 1980-2 C.B. 175, provides that an organization that institutes and maintains environmental litigation as a party plaintiff is operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Code. Rev. Rul. 80-278 provides the following three-part test for purposes of determining whether an organization's litigation activities meet the requirements of section 501(c)(3):

- (1) the purpose of the organization is charitable;
- (2) the activities are not illegal, contrary to a clearly defined and established public policy, or in conflict with express statutory restrictions; and
- (3) the activities are in furtherance of the organization's exempt purpose and are reasonably related to the accomplishment of that purpose.

In Rev. Rul. 80-278 the Service concluded that the organization's litigation activities constituted a reasonable means of accomplishing its exempt purposes. Accordingly, the organization's activities meet the third part of the test; that is, its program of litigation as party plaintiff under state and federal environmental statutes furthers the organization's exempt purposes and is reasonably related to the accomplishment of the charitable purposes for which the organization was formed.

The Service has previously recognized organizations that engage in litigation as being described in section 501(c)(3): (1) legal aid societies providing legal assistance to indigents (Rev. Rul. 69-161, 1969-1 C.B. 149); (2) organizations operated to defend human and civil rights secured by law (Rev. Rul. 73-285, 1973-2 C.B. 174); and (3) public interest law firms providing legal representation on issues of significant public

interest (Rev. Rul. 75-74, 1975-1 C.B. 152, Rev. Rul. 75-75, 1975-1 C.B. 154, Rev. Rul. 75-76, 1975-1 C.B. 154, Rev. Rul. 76-5, 1976-1 C.B. 146, Rev. Proc. 71-39, 1971-2 C.B. 575, and Rev. Proc. 75-13, 1975-1 C.B. 662). These types of organizations generally have staff attorneys providing legal representation to outside clients or groups, as distinguished from the organization itself being the plaintiff in litigation.

Section 5.02 of Rev. Proc. 90-27, 1990-1 C.B. 514, provides that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures. Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination letter will be issued. In those cases where an organization is unable to describe fully its purposes and activities, a refusal to issue a ruling or determination letter will be considered an initial adverse determination from which administrative appeal or protest rights will be afforded.

Generally courts have also concluded that an applicant bears the burden of establishing that it meets the requirements for recognition of exempt status. In numerous cases, courts have upheld Service rulings denying recognition, where an applicant failed to establish its exempt purpose, or that it did not have substantial non-exempt purposes. See, e.g., La Verdad v. Commissioner, 82 T.C. 215 (1984) (lack of "concrete information" about future operations); General Conference of the Free Church of America v. Commissioner, 71 T.C. 920 (1979) ("incomplete" and "ambiguous" responses to questions posed by IRS); Levy Family Tribe Foundation v. Commissioner, 69 T.C. 615, 619 (1978) ("[R]ecord is replete with unsupported generalizations [that are] too general and lack the facts necessary to establish public, rather than personal, purposes . . ."); Church in Boston v. Commissioner, 71 T.C. 102, 106-07 (1978) ("documented criteria which would demonstrate the [gran'] selection process of a deserving recipient, the reason for specific amounts given, or the purpose of the grant"); American Science Foundation v. Commissioner, T.C. Memo. 1986-556 (grant selection criteria and procedures); Pius XII Academy, Inc. v. Commissioner, T.C. Memo. 1982-97 (vague generalizations about proposed school operations);

see also Basic Bible Church of America v. Commissioner, T.C. Memo. 1983-287 (failure to submit books and records for examination supports inference that activities were not in furtherance of exempt purposes).

The requirements for exempt status under IRC 501(c)(3) include lack of inurement and/or private benefit. In circumstances conducive to inurement or private benefit, courts have held that a more searching inquiry into the facts is warranted. A leading case is Bubbling Well Church of Universal Love, Inc. v. Commissioner, 74 T.C. 531 (1980), aff'd, 670 F.2d 104 (9th Cir. 1981), where a church controlled by members of a family sought recognition of IRC 501(c)(3) status. The court stated:

While . . . domination of petitioner by the [family members], alone may not necessarily disqualify it for exemption, it provides an obvious opportunity for abuse of the claimed tax-exempt status. It calls for open and candid disclosure of all facts bearing upon petitioner's organization, operations, and finances so that the Court, should it uphold the claimed exemption, can be assured that it is not sanctioning an abuse of the revenue laws. If such disclosure is not made, the logical inference is that the facts, if disclosed, would show that the petitioner fails to meet the requirements of section 501(c)(3).

Id., at 535 (citations omitted). See also Founding Church of Scientology v. United States, 188 Ct. Cl. 490, 412 F.2d 1197 (1969), cert. denied, 397 U.S. 1009 (unexplained transactions with controlling individuals supported finding of inurement); Basic Unit Ministry of Alma Karl Schurig v. United States, 511 F. Supp. 166 (D.D.C. 1981), aff'd per curiam, 49 A.F.T.R.2d ¶ 82-375 (D.C. Cir. 1982) (citing Bubbling Well Church).

You have failed to establish that you are organized and operated exclusively for purposes described in section 501(c)(3) of the Code. You have not established that your activities and programs will serve public interests rather than private interests pursuant to section 1.501(c)(3)-1(d)(1)(ii) of the regulations. While you indicate that you will provide grants in support of litigation, you have not provided sufficient information to determine your criteria for making such grants and that the litigation activities the grants are intended to support will be reasonably related to accomplishing purposes described in section 501(c)(3) like the organization described in Rev. Rul. 80-278. (See also Rev. Rul. 73-285, 1973-2 C.B. 174; Rev. Rul. 75-74, 1975-1 C.B. 152, Rev. Rul. 75-75, 1975-1 C.B. 154, Rev. Rul. 75-76, 1975-1 C.B. 154, Rev. Rul. 76-5, 1976-1 C.B. 146).

[REDACTED]

Your creator and founder is your sole officer and director. Although you indicate that you will expand your Board of Directors, you have not done so to date. You state that you may engage in various fund-raising activities through the exchange and/or rental of mailing lists developed by your organization or other organizations. You state that decisions concerning your fund-raising activities will be made by your Board of Directors after consultation with your officers and staff. You have failed to establish that your fund-raising activities, including the exchange and/or rental of mailing lists, will not constitute a substantial nonexempt purpose that serves the private interests of your sole officer and director, [REDACTED], pursuant to section 1.501(c)(3)-1(d)(1)(ii) of the regulations. (See also Bubbling Well Church of Universal Love, Inc. v. Commissioner, supra.)

You are required to file federal income tax returns. Contributions to you are not deductible under section 170 of the Code.

You have a right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your principal officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your principal officers, that person will need to file proper power attorney and otherwise qualify under our Conference and Practice Procedures.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides, in part, that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the United States Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service".

If we do not hear from you within 30 days, this ruling will become final and copies of it will be forwarded to your key District Director. Thereafter, any questions about your federal income tax returns or the filing of tax returns should be addressed to that office.

[REDACTED]

When submitting additional letters with respect to this case to the Internal Revenue Service, you will expedite their receipt by placing the following symbols on the envelope:

Internal Revenue Service  
1111 Constitution Ave., NW  
Washington, DC 20224  
[REDACTED]

Attention: [REDACTED]

Sincerely yours,

[REDACTED]  
Chief, Exempt Organizations  
Technical Branch 3

cc: [REDACTED]

cc: [REDACTED]

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